IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8169 of 1995

with

SPECIAL CIVIL APPLICATION No 10239, 10240 & 10241 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAHYABHAI B JETHWA

Versus

ASSTT. TOWN PLANNER

Appearance:

MR NAVIN K PAHWA for Petitioners

MR BP TANNA, SR. ADVOCATE WITH

MS. MAHROOK KERRAVALA for Respondents

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/01/2005

COMMON ORAL JUDGEMENT

In all these petitions, the respective petitioners have challenged the legality and validity of the notices issued by the Assistant Town Planner, Rajkot Municipal Corporation, Rajkot issued under Section 68 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the "Act") read with Rule 33 of the Gujarat Town Planning and Urban Development Rules, 1979 (hereinafter referred to as the "Rules") by which the respective petitioners are directed to vacate their respective shops in question as the same is within 24 feet Town Planning road under the Town Planning Scheme which is sanctioned by the State Government. It is he case of the petitioner that the petitioners are the cabin holders and are in fact tenants of the Rajkot Nagarpalika and were paying the rent also. It is also submitted that some of them are having the licenses under the shops and Establishment Act also. It is submitted that by impugned order dated 4.9.1995, the petitioners are directed to vacate the place in question where their cabins are situated on the ground that the said land in question upon which their cabins are situated would be within 24 meter Town Planning Road under the Town Planning Scheme which is sanctioned by the State Government. It is submitted that the said notices are issued without giving any opportunity to the petitioners. It is also further submitted that even the petitioners are not served with any individual notices as required under Section 52 of the Act read with Rule 26 of the Rules before finalisation of the Town Planning Scheme. Thus, it is submitted that as the impugned order/notice dated 4.9.1995 itself is illegal and arbitrary, the petitions may be allowed by quashing and setting aside the said orders/notices dated 4.9.1995. Except non-service of individual notices under Section 52 of the Act read with Rule 26 of the Rules, no other contention is advanced except the alternative prayer with regard to allotment of alternative place to the respective petitioners so that they can carry on their business by running the shops/cabins.

2. Shri B.P.Tanna, Learned Sr. Advocate appears on behalf of the respondents. An affidavit in reply is also filed on behalf of the respondents. It is submitted that since long the respondent had ceased to collect fees and it is denied that the petitioners are the tenants of the Municipal Corporation. It is also further submitted that the Town Planning Scheme covering the land in question has been sanctioned by the State Government by notification dated 12.7.1991 and the said final Town Planning Scheme has come into force w.e.f. 16.8.1991 and that the land in question upon which the cabins of the

petitioner are situated are within and on 24 meter Town Planning Road under the aforesaid finalised Town Planning Scheme and therefore, considering the provisions of the Act, more particularly, Section 68, the petitioners do not have any right to continue over the land in question as the said lands vest with the Authority and they are required to be removed for the purpose of the Town Planning Road. It is further submitted that considering the judgment of this Court in the case of Chandravadan Chunilal Shah and Others Vs. State of Gujarat & Others reported in 2002 (3) G.L.H. Page 76 and in the case of Shilpa Park Housing Society Ltd. Vs. Surat Urban Development Authority & Others reported in GLR 1996 (2) Page 707, there is no necessity of serving individual notices and as held by this Court absence of individual notice does not render the scheme null and void. Considering the aforesaid judgments as well as the provisions of law, more particularly, Section 52 read with Rule 26, it is submitted that the aforesaid two provisions simply provide publishing a public notice as laid down in Rule 26. Under the circumstances, it is submitted that assuming that there is no individual notice served upon the petitioner that by itself does not render the scheme null and void. It is also further submitted that at no point of time, the petitioners had ever raised any objection against the Town Planning Scheme and/or at the time of final town planning scheme whenever the objections are invited by the appropriate authority under the Act and therefore, now when the once the Town Planning Scheme has become final and the petitioners have allowed the Town Planning Scheme to be final, it is not open for the petitioners now to challenge the consequential orders under Rule 33 which is for the purpose of implementation of the Town Planning Scheme which has become final. It is further submitted that in fact, in the present petitions, none of the petitioners have challenged the legality and validity of the Town Planning Scheme which has become final and what is challenged is only consequential action under the Act for taking possession which is not permissible and for all these reasons, it is requested to dismiss the present petitions. So far as the alternative argument with regard to allotment of alternative space is concerned, it is submitted that apart from the fact that there is no prayer in the present petitions but it is not the policy of the Rajkot Municipal Corporation to give alternative space if the land is going in the town planning scheme for the purpose of construction of road.

3. Heard the Learned Advocates appearing for the parties. The only contention which is raised in the

present petitions and which is argued by Mr.Pahwa, Learned Advocate for the petitioners is that before finalisation of the town planning scheme and/or before issuing the impugned notice dated 4.9.1995, the petitioners are not served with the individual notices/special notices as required under Section 52 of the Act read with Rule 26 of the Rules. It is submitted that as the petitioners are not given any opportunity and/or by way of individual notices before the finalisation of the scheme as required and contemplated under Section 52 of the Act read with Rule 26, the Town Planning scheme itself is illegal and null and void. Therefore, the consequential notices dated 4.9.1995 are itself illegal and most arbitrary which requires to be quashed and set aside.

4. Identical question arose before this Court considering the provisions of Section 52 of the Act read with Rule 26, the Division Bench of this Court in the case of Chandravadan Chunilal Shah (supra) has held that special or individual notice is not required to be given to the person affected by the Town Planning Scheme. This Court in the aforesaid judgment has considered the earlier judgment of the Learned Single Judge of this Court in the case of Shilpa Park Housing Society (supra) where the Learned Single Judge of this Court considering the scope and ambit of Section 52(1)(i) has held that it only provides for giving notice to the persons affected by the Scheme. It does not provide for the notice to each and every interested person-individual. The manner of the notice has been provided under Rule 26 which provides that the notice shall be in Form H in the official gazette and in one or more gujarati newspaper circulating within the area of the appropriate authority. It is further held that there is no necessity of serving notices and absence of individual notices does not render the scheme null and void. Now considering the aforesaid two judgments and the arguments which is canvassed on behalf of the petitioner and considering the fact that even it is not the case of the petitioners that no notice as required under Rule 26 in Form H in the official notification and/or in the newspaper is not published. Under the circumstances, the only contention is with regard to individual special notice to the petitioners and considering the aforesaid two judgments, there is no requirement of serving inviting special notice to the person who is likely to be affected by the Scheme and considering the aforesaid two judgments and non-service of special individual notice to the person who is likely to be affected by the scheme, it does not render the scheme null and void, the contention of the petitioner

cannot be accepted and accordingly, the present petitions are required to be dismissed.

5. In the present case, the Town Planning Scheme has become final by the State Government. It has come into effect from 16.8.1991. The land in question upon which the petitioners are having their cabins is forming part of the 24 meter town planning road. Considering the provisions of the Act, the entire land vested with the Town Planning Authority and the petitioners do not have any right title or interest on the land in question of finalisation of the Town Planning Scheme and the petitioners are required to be evicted considering the provision of Section 68 of the Act read with Rule 33 of the Rules. Under the circumstances, on finalisation of Town Planning Scheme and the land in question having found on the 24 meter town planning road if the impugned notices are issued dated 4.10.1995 under Section 68 of the Act read with Rule 33 of the Rules. Under the circumstances, the finalisation of Town Planning Scheme and the petitioners are required to be evicted considering the provision of Section 68 of the Act read with Rule 33 of the Rules. Under the circumstances, on finalisation of the Town Planning Scheme and the land in question having found on the 24 meter road if the impugned notices are issued dated 4.10.1995 under Section 68 of the Act read with Rule 33, it cannot be said that the action of the respondents is in any way illegal and/or arbitrary which requires interference of this Court exercising powers under Article 226 of the Constitution of India. Accordingly, all the petitions are required to be dismissed and are accordingly dismissed. So far as the alternative argument on behalf of the petitioners to allot alternative space is concerned, Shri Tanna, Learned Sr. Counsel has submitted that as such, there is no policy of the Rajkot Municipal Corporation and/or the Authority to provide alternative space. However, it will be open for the respective petitioners to move an appropriate application before the respondents and/or the Rajkot Municipal Corporation and the same may be considered in accordance with law and on merits and as per the policy and scheme of the Corporation. For the reasons stated above, all the above three petitions are dismissed. Rule discharged. Adinterim relief granted earlier stands vacated forthwith.

(M.R.Shah, J)
jitu